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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,130	06/15/2001	Constantine J. Tsikos	108-106USA000	9109

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EXAMINER

KIM, AHSHIK

ART UNIT

PAPER NUMBER

2876

DATE MAILED: 02/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/883,130

Applicant(s)

TSIKOS ET AL.

Examiner

Ahshik Kim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09/26/01 (Preliminary Amendment).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 14,20,22,37 and 56 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14,20,22,37 and 56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Preliminary Amendment***

1. Receipt is acknowledged of the preliminary amendment filed on September 26, 2001.
- 5 Claims 1-13, 15-19, 21, 23-36, 38-55, and 57-94 are cancelled. Claims 14, 20, 22, 37, and 56 remain for examination.

### ***Drawings***

2. This application has been filed with informal drawings which are acceptable for  
10 examination purposes only. Formal drawings will be required when the application is allowed.

### ***Specification***

3. The lengthy specification and a large number of drawings have not been checked to the  
extent necessary to determine the presence of all possible minor errors. Applicant's cooperation  
15 is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Objections***

4. Claims 20 and 56 are objected to because of the following informalities:  
Re claim 20, lines 2 and 6, delete “, for example,”. The examiner notes that phrase “for  
20 example” is not prohibited in claims although not encouraged. However, the phrase “for  
example” in claim 2 seem like a redundant expression. Examiner suggests that lines 6 and 7 of

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claim 2 may be written as “..... use in diverse application including object identification, tracking, transportation and routing operations.”

Re claim 56, line 1: substitute “A unitary (PLIIM-based)” with --A unitary PLIIM-based--.

5 Re claim 56, line 2, substitute “LDIP” with --Laser Doppler Imaging and Profiling (LDIP)--.

Re claim 56, line 4, substitute “(IFD subsystem (i.e., “camera”))” with --(IFD subsystem (i.e., camera))--.

10

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

15 5. Claim 56 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re claim 56, lines 8-9, the Applicant is suggested to re-phrase “without the use of costly telecentric optics employed by prior art systems,”. First, the prior arts are not disclosed, and  
20 therefore, one ordinary skill in the art would be unable to contemplate what is meant by the phrase. Secondly, even if the prior arts had been provided, the Applicant can not negatively claim their invention by pointing out what the invention is not.

Applicant is required to amend the claims so that the claim can particularly point out claimed invention.

***Obviousness-Type Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 14, 20, 22, 37, and 56 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9, 26-28, 30, and 31 of co-pending Application Serial No. 09/721,885 to Tskios et al. (hereinafter '885 application).

Although the claims are not identical, they are not patentably distinct from each other because in claims 14, 20, 22, 37, and 56 of the instant application, the Applicant claims an package identification and measuring system optical system (claim 14) or a unitary object attribute acquisition system (claims 20 and 22). In claims 37, and 56, component parts such as a planar laser illumination system (PLIIM), a planar laser illumination array (PLIA) and a laser doppler Imaging and profiling (LDIP) subsystem are disclosed.

In claim 30 of '885 application, a package dimensioning and identification system in a single housing of compact construction is disclosed. Such system can be considered as an object attribute acquisition and analysis system In claim 31, it is further disclosed that the system comprises a LDIP subsystem. Use of a planar laser illumination array and planar laser

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illumination module is also shown in claims 1-4. In view of the above, it is Examiner's position that that claims of instant application recites almost identical system as disclosed in '885 application.

Although 885' application does not explicitly refer the functions of optical system as  
5 auto-focus/auto-zoom imaging optics as recited in claim 22, such capacity to adjust working range is disclosed in claims 6 and 7.

The Examiner further notes that the claims in instant Application provide more detailed embodiment (i.e., camera) or the specific methods or processes of how the system operates. However, such embodiments and steps are well-known to one ordinary skill in the art or  
10 inherently included in '885 application in that such steps will occur during the actual use of the system in '885 application.

Thus, with respect to above discussions, it would have been obvious to an artisan at the time the invention was made to use the teaching of claims 1-9, 26-28, 30, and 31 of '855 application as a general teaching to utilize the illumination and image detection system to come  
15 up with automated unitary-type package identification and measuring system disclosed in the instant application.

This is a double patenting rejection. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to  
20 be commonly owned with this application. See 37 CFR 1.130(b).

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**Conclusion**

I. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Mulla et al. (US 6,311,896); Tsikos (US 4,979,815) disclose a scanner utilizing field of views; an imaging system and a method for calibrating such a system.

- 5 II. Any inquiry concerning this communication or earlier communications from the examiner should be directed to *Ahshik Kim* whose telephone number is (703)305-5203 . The examiner can normally be reached between the hours of 6:00AM to 3:00PM Monday thru Friday.

10 If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee, can be reached on (703) 305-3503. The fax number directly to the Examiner is (703) 746-4782. The fax phone number for this Group is (703)308-7722, (703)308-7724, or (703)308-7382.

15 Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [ahshik.kim@uspto.gov].

20 *All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.*

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.

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Ahshik Kim  
Patent Examiner  
Art Unit 2876  
30 February 19, 2003

  
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